UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

IN RE: : CHAPTER 11

NUTRACAP HOLDINGS, LLC, : CASE NO. 25-50430-LRC

:

DEBTOR.

MARY IDA TOWNSON,

UNITED STATES TRUSTEE,

.

MOVANT,

vs. : CONTESTED MATTER

•

NUTRACAP HOLDINGS, LLC,

:

RESPONDENT. :

NOTICE OF HEARING ON UNITED STATES TRUSTEE'S MOTION TO DISMISS CASE

PLEASE TAKE NOTICE that the United States Trustee has filed a Motion to Dismiss Case and related papers with the Court, seeking an order dismissing this case pursuant to 11 U.S.C. § 1112(b).

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion at 10:15 A.M. on June 18, 2025 in Courtroom 1204, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, which may be attended in person or via the Court's Virtual Hearing Room. You may join the Virtual Hearing Room through the "Dialin and Virtual Bankruptcy Hearing Information" link at the top of the homepage of the Court's website, www.ganb.uscourts.gov, or the link on the judge's webpage, which can

also be found on the Court's website. Please also review the "Hearing Information" tab on the judge's webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may

use the telephone dial-in information on the judge's webpage.

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: May 2, 2025

MARY IDA TOWNSON UNITED STATES TRUSTEE REGION 21

/s Jonathan S. Adams

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UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

IN RE: : CHAPTER 11

NUTRACAP HOLDINGS, LLC, : CASE NO. 25-50430-LRC

:

DEBTOR.

VS.

:

MARY IDA TOWNSON,

UNITED STATES TRUSTEE,

.

MOVANT,

: CONTESTED MATTER

.

NUTRACAP HOLDINGS, LLC,

:

RESPONDENT. :

MOTION TO DISMISS CASE

COMES NOW Mary Ida Townson, United States Trustee for Region 21, in furtherance of the administrative responsibilities imposed by 28 U.S.C. § 586(a), and respectfully moves this Court to enter an order dismissing the above-captioned Chapter 11 case for cause pursuant to 11 U.S.C. § 1112(b). In support of this motion, the United States Trustee shows the Court as follows:

Summary of Relief Requested

1.

Bankruptcy Code section 1112(b)(1) provides that:

... on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case

under this chapter, whichever is in the best interests of creditors and the estate, for cause, unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

2.

Bankruptcy Code section 1112 provides that, except as provided in section 1104(a), if the party moving for dismissal establishes cause, absent unusual circumstances specifically identified by the Court that establish that the requested dismissal or conversion is not in the best interests of creditors and the estate, the Court shall dismiss or convert the case to chapter 7, whichever is in the best interest of creditors and the estate. 11 U.S.C. § 1112(b)(1).

3.

Cause exists for the Court to dismiss this case because the debtor failed to timely file and transmit required reports and failed to pay quarterly fees to the United States Trustee.

¹ "Although section 1112 does not define the phrase 'unusual circumstances,' it clearly contemplates conditions that are not common in most chapter 11 cases. Although each chapter 11 case is to some extent unique, and unusual circumstances may exist in any particular case regardless of its size or complexity, the import of section 1112(b) is that, if cause exists, the case should be converted or dismissed unless unusual facts or circumstances demonstrate that the purposes of chapter 11 would be better served by maintaining the case as a chapter 11 proceeding." *In re Kent*, 2008 WL 5047799 at *6 (Bankr. N.D. Arizona), *In re Blixseth*, 2009 WL 1525994 (Bankr. D. Montana).

Statement of Facts

4.

The debtor commenced this case on January 14, 2025, by filing a petition for relief under chapter 11 of the United States Bankruptcy Code.

5.

Bankruptcy Code section 704(a)(8) requires the debtor file with the Court and the United States Trustee periodic reports and summaries of the operation of its business, including a statement of receipts and disbursements, and such other information as the United States Trustee or the Court requires.

6.

Federal Rule of Bankruptcy Procedure 2015(a) directs chapter 11 debtors-inpossession to file the reports and summaries required by section 704(a)(8).

7.

The United States Trustee is responsible for ensuring all reports, schedules, and fees required to be filed and paid by a debtor are properly and timely addressed, monitoring the progress of the case, and taking the necessary action to prevent undue delay in such progress. 28 U.S.C. § 586 (a)(3)(D) and (G).

8.

Accordingly, the United States Trustee for Region 21 has established Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees ("the

Guidelines"). The Guidelines explicitly state that compliance is essential and that the debtor's failure to comply may result in the United States Trustee filing a motion to dismiss or convert the case, a motion for appointment of a chapter 11 trustee or an examiner, or a motion for sanctions.

9.

The United States Trustee's staff reviewed the Guidelines with the debtor and the debtor's attorney.

10.

The debtor has not filed reports for the months of February 2025 and March 2025. By the date of the hearing on this matter, the April 2025 report will also be due.

11.

28 U.S.C. §1930(a)(6) prescribes quarterly fees that are to be paid by chapter 11 debtors to the United States Trustee Program. In essence, quarterly fees accrue throughout the pendency of a chapter 11 reorganization case (i.e., until the case is closed, dismissed, or converted to another chapter) and are payable on a quarterly basis, 30 days following the end of each calendar quarter. "The amount of the quarterly fee [is] calculated according to a graduated scale based on the total sum of disbursements as specified in § 1930(a)(6). 'Disbursements' include all pre- and post-confirmation payments made by or on behalf of the debtor, including routine operating expenses." See, e.g., *Tighe v. Celebrity Home (In re Celebrity Home Entertainment, Inc.)*, 210 F.3d 995 (9th Cir. April 21, 2000).

12.

The United States Trustee conducted the initial debtor interview on January 29, 2025. During the initial debtor interview, the United States Trustee's representative reviewed the Guidelines with the debtor's attorney and representative.

13.

The United States Trustee began the section 341 meeting of creditors on February 14, 2025. During the meeting of creditors, counsel for the United States Trustee reminded the debtor's representative about the debtor's duty to pay quarterly fees.

14.

The debtor has not paid quarterly fees for the 1st quarter, 2025. The United States Trustee's records show the debtor owes an estimated \$12,022.00 for outstanding quarterly fees. The quarterly fee was due no later than one month following the end of the calendar quarter.

15.

"Section 1112(b)(4) states, 'the term "cause" includes--' and then lists sixteen examples of "cause." The list is not exhaustive, and a case may be dismissed for other causes, such as bad faith or if the petition does not serve a bankruptcy purpose." *In re Americert, Inc.*, 360 B.R. 398, 401 (Bankr. D. N.H. 2007). "Fundamental bankruptcy policy continues to support the proposition that the inability to propose a feasible reorganization or liquidation plan provides 'cause' for dismissal or conversion of a chapter

11 case on request of an interested party. *In re DCNC North Carolina I, LLC*, 407 B.R. 651, 666 (Bankr. E.D. Pa. 2009). "Chapter 11 debtors cannot 'have their cake and eat it too'; the extraordinary relief provided by the bankruptcy laws comes with a price. That 'price' includes the responsibility to pursue an open and expeditious reorganization." *In re Milford Connecticut Assoc., L.P.*, 389 B.R. 303, 309 (BK. Conn. 2008).

Debtor's Failure to File Reports Or Pay Quarterly Fees is Cause for Dismissal of the Case

16.

The debtor's unexcused failure to timely file the monthly reports is cause for dismissal of the case pursuant to 11 U.S.C. §1112(b)(4)(F). The debtor's failure to timely pay quarterly fees is cause for dismissal of the case pursuant to 11 U.S.C. §1112(b)(4)(K).

WHEREFORE the United States Trustee requests the Court dismiss this case.

Dated: May 2, 2025.

MARY IDA TOWNSON UNITED STATES TRUSTEE REGION 21

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *Motion to Dismiss Case* and *Notice of Hearing on United States Trustee's Motion to Dismiss Case* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following party who has appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

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I further certify that on this day, I caused a copy of this document to be served via United States First Class Mail, with adequate postage prepaid on the following parties at the address shown for each.

Nutracap Holdings, LLC 2825 Pacific Drive Suite C Norcross, Georgia 30071

ALL PARTIES ON THE ATTACHED MAIL MATRIX

Dated: May 2, 2025.

MARY IDA TOWNSON United States Trustee Region 21

s/Jonathan S. Adams

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Case 25-50430-Irc
Label Matrix for local noticing 113E-1 Case 25-50430-lrc Northern District of Georgia Atlanta Fri May 2 16:06:49 EDT 2025 ABBOTT BLACKSTONE COMPANY 411 Cleveland St #198

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28 West 23rd Street Floor 2 New York, NY 10010-5260

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Rite Weight, Inc 3802 Irvingdale Road Duluth, GA 30096-2553

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Case 25-50430-Irc Doc 110 Filed 05/02/25 Entered 05/02/25 16:17:17 Desc Main The Kaplan Group Commercial Coblections 2 Kelly Butcher

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

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Glanbia Nutritionals

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(u) Berrendia O'Neal of BK Associates Real

(u) David Bromwich

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(du) HM Peachtree Corners I LLC

(u) HMI Atlanta V LLC

(u) Alphonso Habbaba

(d) Health Club Hashimoto LLC 1625 Street Road

(u) Hi-Tech Pharmaceuticals, Inc.

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Little Woodcote Estate 38A Telegraph Tra Carshalton, Wallington

(u) Norcross Tucker Property LP

(u) Nutracap Labs, LLC

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548 Market Street PMB 96462

(u)PureSynmr Ingredients Room 1608-1609 Union Energetic Intl Tower No.1088 New Jingqiao Rd Pudong Shanghai, (u) The Committee of Unsecured Creditors

End of Label Matrix
Mailable recipients 271
Bypassed recipients 20
Total 291

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